(2) section 25 of the CLPA has no application on the ground that the deed of assignment is not a deed in that it had not been executed by the plaintiffs.

In my view therefore, although the defendants have an interest in the property for the purpose of lodging a caveat, they have not established a valid ground for lodging or maintaining it against the plaintiffs. Accordingly, the caveat ought to be removed. In the course of his submission counsel for the defendants contended that if the court found that the grounds of claim did not support the caveat, then the court should amend it to include the ground that the plaintiffs had failed to exercise the power of sale properly. However, no formal application was made nor was a form of the amendment produced to the court.

In any event, I do not think that the continuance of the caveat will resolve the most important issue in this matter, ie whether the sale to HPL was improper and if so whether its completion ought to be restrained until trial.

On the second day of hearing of this application, the defendants had filed a counterclaim by way of summons-in-chambers for the following reliefs: (1) the dismissal of the plaintiffs' application; (2) a declaration that the sale by the plaintiffs to HPL was not a proper bona fide exercise of the mortgagee's power of sale and that the sale be set aside; (3) an injunction restraining the plaintiffs from completing the sale; (4) such other relief as the court deems fit. However, having filed the counterclaim, counsel made no application for interlocutory injunction; he sought what was in effect a final declaration and a permanent injunction. In these circumstances, I did not think that it would be desirable for the court to consider the allegations raised by counsel for the defendants on whether the power of sale was properly exercised by the plaintiffs which were many. Because of the way these allegations were made the plaintiffs were required to meet them at short notice.

In my view of the nature of these allegations and also the serious consequences to the plaintiffs as well as HPL of the court granting an injunction in the form sought by the defendants, I did not think this was a satisfactory basis on which the court should proceed. Accordingly, I have decided that all these procedural irregularities should be put right first before the application could be entertained.

For the reasons given above, I allowed the plaintiffs' application in terms of prayers (1) and (2) without prejudice to the defendants' right to apply for an interlocutory injunction either under the counterclaim filed in this application or in a fresh action. The defendants elected to commence a fresh action and accordingly the counterclaim was deemed to have been discontinued. The defendants will pay the costs of this application except the getting-up fee on the issue as to whether the defendants are entitled to an interlocutory injunction. The costs in relation to this issue would be dealt with as part of the fresh proceedings.

Application allowed.

Solicitors: *Wong Yoong Tan & Molly Lim* ; *Manjit Darshan & Partners.*

Reported by *Ng Sheau Jiuan*

PIC Property Ltd v Sing Eng (Pte) Ltd

HIGH COURT (SINGAPORE) – ORIGINATING SUMMONS NO 1221 OF 1987
CHAO HICK TIN JC
30 JULY 1988

Companies and Corporations – Shares – Transfer of – Equitable mortgage of shares – Defendant company not replying to request for transfer of shares by mortgagee – Sale of shares by mortgagee to plaintiffs – Plaintiffs applied for rectification of register of shareholders – Whether defendant company breached statutory provisions in not sending out notice of refusal – Whether defendant company's articles of association permitted transfer of shares to non-member – Companies Act (Cap 50, 1985 Ed), ss 128, 130 & 194

In this case, M and K, who were directors of the defendant company, charged shares that they owned in the defendant company to XIB under two guarantees and memoranda of charge. A blank instrument of transfer was executed and delivered to XIB. By a letter dated 9 May 1987, XIB forwarded to the defendant company the relevant share certificates and the two transfer forms, duly completed, in favour of XIB Nominees Ltd. No reply was given by the defendant company to this letter. On 22 June 1987, XIB gave notice to the defendant company, pursuant to art 34 of the articles of association of the defendant company, that XIB wished to transfer the shares. The defendant company did not respond within 14 days as required under art 35. On 20 August 1987, XIB notified the defendant company that it had sold the shares to the plaintiffs and requested the defendant company to issue the new share certificates in favour of XIB Nominees Ltd. On 25 August 1987, the defendant company replied that as XIB was never the registered proprietor of the shares, XIB's request could not be granted. The plaintiffs made an application under ss 130 and 194 of the Companies Act (Cap 50, 1985 Ed) ('the Act') to rectify the register of shareholders of the defendant company and for an order that the defendant company do deliver to the plaintiffs new share certificates in the name of the plaintiffs' nominee. The contention of the defendant company was that XIB was not entitled to give notice to the company under art 34.

Held, allowing the plaintiffs' application:

(1) Both M and K had delivered the relevant share certificates to XIB together with the duly executed blank forms. This arrangement amounted to an equitable mortgage. XIB could

exercise the power of sale in the event of default by M and K without having to apply to the court for an order of sale.

(2) At no time did the defendant company reply to the lodgment of transfer in favour of XIB Nominees Ltd. The defendant company had failed, within the period of one month, as required under s 128(1) and (2) of the Act, to send out the appropriate notice of refusal. The defendant company was therefore clearly in breach of those provisions of the Act.

(3) Under art 33 of the articles of association, it was clear that there was no restriction on the right of transfer of shares to another member of the defendant company. A transfer to a non-member must, however, be preceded by a written notice to the defendant company specifying the particulars set out in art 34.

(4) Article 34 referred to 'a person proposing to transfer any share', not to a 'member'. Article 34 should be read with art 33 which provides that a 'share may be transferred by a member or other person entitled to transfer'. Under the guarantees and the memoranda, and under general law, XIB was clearly a person 'entitled to transfer'.

(5) No dispute of title was raised by either M or K. Fictitious issues were unnecessarily raised by the defendant company. There was no reason why the court should not exercise its summary jurisdiction under s 194(1) of the Act in ordering rectification of the register.

[*Editorial Note*: The defendant has appealed to the Court of Appeal vide Civil Appeal No 12 of 1988.]

Cases referred to

1 *Harrold* v *Plenty* [1901] 2 Ch 314 (refd)
2 *Stubbs* v *Slater* [1910] 1 Ch 632 (refd)
3 *Re Copal Varnish Co Ltd* [1917] 2 Ch 349 (refd)
4 *Re Hackney Pavilion Ltd* [1924] 1 Ch 276 (refd)
5 *Hunter* v *Hunter* [1936] AC 222 (distd)
6 *Re Diamond Rock Boring Co Ltd, ex p AR Shaw* (1877) 2 QBD 463 (refd)

Legislation referred to

Companies Act (Cap 50, 1985 Ed) ss 128, 130, 194

Philip Pillai (*Ms Yvonne Tan* with him) for the plaintiffs.
Tan Jing Quee for the defendants.

Cur Adv Vult

Chao Hick Tin JC: This was an application made under ss 130 and 194 of the Companies Act (Cap 50, 1985 Ed) to rectify the register of shareholders of Sing Eng (Pte) Ltd, the defendants herein, and for an order that the defendants do deliver to the plaintiffs new share certificates in the name of the plaintiffs' nominee. The defendants were a private limited company, incorporated in Singapore (hereinafter called 'the defendant company') with an authorized capital of $2.5 m of which $1,984,278 was paid up.

One Lie Mo Meng, also known as Lie Moeng Kieng, was the owner of 514,930 shares in the capital of the defendant company. Pursuant to a guarantee and a memorandum of charge on stocks and shares, both dated 16 March 1986 (hereinafter called the 'first guarantee' and the 'first memorandum') and for the consideration therein stated, Lie Mo Meng charged, inter alia, the said 514,930 shares in favour of Xiamen International Bank ('XIB') and also deposited the relevant share certificates with XIB.

Another person, one Lie Mo Kwang (also known as George MK Lee), was the owner of another 514,930 shares in the defendant company. Pursuant to a guarantee and a memorandum of charge of stocks and shares, both dated 21 March 1986 (hereinafter called the 'second guarantee' and the 'second memorandum') and for the consideration therein mentioned, Lie Mo Kwang charged, inter alia, the said 514,930 shares in favour of XIB and also deposited the relevant share certificates with XIB.

Both Lie Mo Meng and Lie Mo Kwang were also directors of the defendant company.

On 21 April 1987, both executed, pursuant to the first and second memoranda, a blank instrument of transfer which they delivered to XIB. By a letter dated 9 May 1987, M/s Shook Lin & Bok ('SLB') forwarded to the defendant company the relevant share certificates and the two transfer forms, duly completed, in favour of XIB Nominees Ltd. This letter of 9 May 1987 from SLB was as follows:

> We refer to the circular resolution of the board of directors approving the transfer of 1,029,860 shares to XIB Nominees Ltd. We now forward herewith:
>
> (1) the two share transfers duly signed by M/s Lie Mo Kwang and Lie Moeng Kieng and stamped;
> (2) original share certificates nos 22 and 23 for 514,930 shares each.
>
> Please let us have the share certificates in favour of XIB Nominees Ltd as soon as possible.

No reply was given by the defendant company to the letter of 9 May 1987. On 22 June 1987, SLB, acting on behalf of XIB and without prejudice to the letter of 9 May 1987, gave notice to the defendant company, pursuant to art 34 of the articles of association of the defendant company, that XIB wished to transfer the said shares. This notice was given by XIB as a person entitled to transfer pursuant to the authority given to XIB by the owners of the shares. For this purpose, XIB constituted the defendant company as their agents for the sale of the shares to any member of the defendant company at the fair price of $2,745,000 or at a fair price to be fixed by the auditors of the defendant company. The defendant company did not respond within 14 days as required under art 35. On 20 August 1987, SLB, on behalf of XIB, notified the defendant company that XIB had sold the shares to PIC Property Ltd, the plaintiffs herein. The defendant company was requested to issue the new share certificates in favour of XIB Nominees.

It was only on 25 August 1987 that the solicitors for the defendant company, M/s Jing Quee Chin Joo & Teck Hui, replied to SLB in these terms:

> We act for Sing Eng (Pte) Ltd and refer to your letter of 20 August 1987 to our clients.
>
> We are instructed by our clients that the shares comprised in the two transfers delivered by you to our clients (are) registered in the names of Lie Mo Kwang and Lie Mo Meng respectively. Xiamen International Bank or XIB (Nominees) Ltd never was the registered proprietor of any part of the said shares. In the circumstances, our clients are unable to consider your request to have the two share transfers registered in the names of PIC Property Ltd or its nominees.

The foregoing were the pertinent facts. Mr Tan Jing Quee for the defendants, raised the following two points in his written skeletal arguments. First, which was basically the same point as contained in the letter of 25 August 1987, was that XIB was not entitled to give notice to the defendant company under art 34. Second, as there were issues relating to the title of the shares and as the guarantees and the memoranda were executed in and subject to the law of Hong Kong, these issues should be determined by the court in Hong Kong and this court should decline to exercise its jurisdiction under s 194. The defendants submitted that the proper procedure should be by way of a prior action against Lie Mo Meng and Lie Mo Kwang for a declaration directing both of them to give notice to the defendant company to transfer the shares to XIB.

Let me first set out the relevant statutory provisions in the Companies Act (Cap 50, 1985 Ed) which govern this matter:

> 128(1) If a company refuses to register a transfer of any shares, debentures or other interests in the company it shall, within one month after the date on which the transfer was lodged with it, send to the transferor and to the transferee notice of the refusal.
>
> (2) Where an application is made to a company for a person to be registered as a member in respect of shares which have been transferred or transmitted to him by act of parties or operation of law, the company shall not refuse registration by virtue of any discretion in that behalf conferred by the articles unless it has served on the applicant, within one month beginning with the day on which the application was made, a notice in writing stating the facts which are considered to justify refusal in the exercise of that discretion.
>
> 130(1) Every company shall ... within one month after the date on which a transfer (other than such a transfer as the company is for any reason entitled to refuse to register and does not register) of any of its shares or debentures is lodged with the company, complete and have ready for delivery all the appropriate certificates and debentures in connection with the allotment or transfer.
>
> (3) If any company on which a notice has been served requiring the company to make good any default in complying with this section fails to make good the default within ten days after the service of the notice, the court may, on the application of the person entitled to have the certificates or the debentures delivered to him, make an order directing the company and any officer of the company to make good the default within such time as is specified in the order, and the order may provide that all costs of and incidental to the application shall be borne by the company or by any officer of the company in default in such proportions as the court thinks fit.
>
> 194(1) If ...
>
> (a) the name of any person is without sufficient cause entered in or omitted from the register; or
>
> (b) default is made or unnecessary delay takes place in entering in the register the fact of any person having ceased to be a member,
>
> the person aggrieved or any member or the company may apply to the Court for rectification of the register, and the Court may refuse the application or may order rectification of the register and payment by the company of any damages sustained by any party to the application.
>
> (2) On any application under subsection (1), the Court may decide –
>
> (a) any question relating to the title of any person who is a party to the application to have his name entered in or omitted from the register, whether the question arises between members or alleged members or between members or alleged members on the one hand and the company on the other hand; and
>
> (b) generally, any question necessary or expedient to be decided for the rectification of the register.

I should also at this point refer to the articles of association of the company which were pertinent to the matter in hand:

> (33) A share may be transferred *by a member or other person entitled to transfer* (hereinafter called 'the transferor') to any member selected by the transferor; but no share shall be transferred to a person who is not a member so long as any member (or any person selected by the directors as one whom it is desirable in the interests of the company to admit to membership) is willing to purchase the same at the fair value. (emphasis added)
>
> (34) Except where the transfer is made pursuant to art 33, 36 and 43 hereof, *a person proposing to transfer any share* (hereinafter called 'the proposing transferor') shall give notice in writing (hereinafter called 'the transfer notice') to the company that he desires to transfer the same. Such notice shall specify the sum he fixes as the fair value, and shall constitute the company his agent for the sale of the share to any member of the company at the price so fixed or at the option of the purchaser, at the fair value to be fixed by the auditors of the company. The transfer notice shall not be revocable except with the sanction of the directors. (emphasis added)
>
> (35) If the company shall within the space of 14 days after being served with such notice find a member (hereinafter called 'the purchasing member') willing to purchase the share and shall give notice to the proposing transferor, he shall be bound, upon payment of fair value, to transfer to the purchasing member.
>
> (36) If the company shall not within the space of 14 days aforesaid find a member willing to purchase the share and give notice in the manner aforesaid, the proposing transferor shall at any time within two months afterwards be at liberty to sell and transfer the share to any person at any price.

In this case, as indicated above, both Lie Mo Meng and Lie Mo Kwang had delivered the relevant share certificates to XIB together with duly executed blank transfer forms. Apart from the rights of XIB under the guarantees and the memoranda, clearly this arrangement amounted to an equitable mortage: see *Harrold* v *Plenty*.[1] XIB could exercise the power of sale in the event of default by Lie Mo Meng and Lie Mo Kwang without having to apply to the court for an order for sale: *Stubbs* v *Slater*.[2] More importantly, it should be noted that neither person questioned the right of XIB to have the shares sold or transferred.

It is settled law that unless the articles of a company otherwise provide, a shareholder has a free right to transfer his shares to whom he will: see *Re Copal Varnish Co Ltd*.[3] A transferee under a valid transfer has an absolute right to be registered unless there is power reposed in the company in its articles to refuse to register and the company has effectively so refused: see *Re Hackney Pavilion Ltd*.[4]

When SLB forwarded the duly executed transfer forms and the share certificates to the defendant company on 9 May 1987, it was on the understanding that the board of directors had by circulation approved the transfer. But that understanding would appear to be erroneous. Nevertheless, at no time did the defendant company reply to that lodgment of transfer. The defendant company had failed, within the period of one month, as required under s 128(1) and (2) of the Act, to send out the appropriate notice of refusal. The defendant company was therefore clearly in breach of those provisions of the Companies Act.

Be that as it may, the arguments before me centred on the restrictions on transfer imposed in the articles of association, which I will now turn to. Under art 33 it was clear that there was no restriction on the right of transfer of shares to another member of the defendant company. Transfer to a non-member was only possible if no existing member wished to purchase the relevant shares at a fair value. Such a transfer to a non-member must be preceded by a written notice to the defendant company, which notice should specify what was the fair value for the shares and contain the additional particulars set out in art 34. The defendant company must within 14 days find a member who is willing to buy the shares failing which the shares could be transferred to any non-member.

As I understood it, the argument of the defendant company was that as XIB was not the registered owner of the shares and was not a member, it was not entitled to give a transfer notice to the defendant company under art 34. But this argument ignored the fact that art 34 referred to 'a person proposing to transfer any share' not to a '*member*'. I was of the view that art 34 should be read with art 33, which provides that 'a share may be transferred by a member *or other person entitled to transfer*'. Under the guarantees and the memoranda, and indeed under general law, XIB was clearly a person 'entitled to transfer'. Accordingly, on 22 June 1987, XIB, as a person entitled to transfer, gave the requisite written notice to the defendant company. Here I would repeat my earlier comment that this right to transfer had not been questioned by either Lie Mo Meng or Lie Mo Kwang. As no response was given by the defendant company within 14 days that a member was willing to buy the shares, XIB was therefore entitled to transfer the shares to whomsoever it wished within a period of two months of the date of the notice. On 20 August 1987, XIB asked the defendant company to issue the new share certificates in favour of XIB Nominees Ltd. The reply on 25 August 1987 by M/s Jing Quee Chin Joo & Teck Hui, on behalf of the defendant company, was clearly too late.

In support of the contention that XIB was not entitled to give the transfer notice under art 34, counsel for the defendant company referred to the case *Hunter* v *Hunter*.[5] But there were clearly significant differences between the relevant articles in the *Hunter's* case[5] and the articles in the present case. In *Hunter*,[5] the relevant art 17 provided that:

> 17 *No member* shall be entitled to transfer any share otherwise than in accordance with the following provision:
>
> (a) *A member* desirous of selling his shares ... shall give notice ... to the secretary of the company containing an offer to sell the same ... (emphasis added).

Viscount Hailsham LC in his judgment at p 248 stated:

> I am satisfied ... that the steps taken to put the nominees of the bank on the register were not in accordance with the terms of the article. This construction does not prevent a mortgage of the shares or their sale by the mortgagees in default of payment of the mortgage debt. But the sale must be effected in accordance with the terms of the article. The bank could have taken from the plaintiffs letters addressed to the auditors and to the secretary respectively in blank, or they could have taken a power of attorney from the plaintiff to write such letters in his name and on his behalf ...

In my judgment, *Hunter*[5] was decided on the basis of the provision of the article there in question. I did not think it was of assistance to the defendant company here. In *Hunter*[5] the notice must be given by a member, not so in the present case. For the reasons which I have given above, I rejected the argument of the defendant company that XIB was not entitled to give the transfer notice under art 34.

Turning now to the second main point of the defendant company, I would like to emphasize again that neither Lie Mo Meng nor Lie Mo Kwang questioned the right or title of XIB to transfer the shares. The defendant company had not tendered any evidence to show that the right or title of XIB was being challenged. All I had

before me were just speculative issues raised by counsel for the defendant company without any foundation whatsoever. Further, I did not see what difference it made that the guarantees and memoranda were executed in Hong Kong. No evidence was placed before me that the governing law in Hong Kong was different from Singapore.

The defendant company must comply with its own articles of association. It must act fairly in a situation like this. Included in the defendants' bundle of authorities was the case *Re Diamond Rock Boring Co Ltd, ex p AR Shaw.*[6] In reliance on this case, counsel for the defendant company urged this court not to exercise its summary jurisdiction under s 194(1) in ordering rectification of the register. I did not see how this case could assist the defendant company. On the contrary it reinforced my view that I should grant the orders prayed for. Putting it very briefly, in *Ex parte Shaw*,[6] one Shaw, through an agent Smith, purchased shares belonging to one Piers. Smith acted as agent for both parties. Shaw paid the purchase price to Smith. In the meantime, Piers executed a transfer and forwarded it together with the scrip to the secretary of the company. The secretary wrote upon the transfer the words 'certificates lodged at company's office' and returned it to Piers. The scrip was retained by the company. Piers forwarded the transfer to Shaw through Smith. Shaw executed the transfer and returned it to Smith so that Smith could get Shaw's name put upon the list of shareholders. Smith absconded and did not pay over the sale price to Piers and neither did he forward the transfer to the company for registration. Shaw demanded that the company put his name on the register which the company refused. On Shaw's application to court to rectify the register, Piers opposed the application. The company appeared but offered no opposition. The application of Shaw was granted. Lord Coleridge CJ sitting in the Court of Appeal said at p 479:

> I think that the legislation intended to give the court jurisdiction to make an order so as to decide questions of title, trusting to the discretion of the court not to decide in this summary manner any intricate or difficult question of title; but that, if the court thinks fit, they have jurisdiction to make the order in all cases.

Brett LJ also stated the following at p 484:

> No doubt, as a matter of judicial discretion, when there is a real dispute, and the amount depending is large, or if the facts are complicated, or any general principle is involved, the court, instead of proceeding in this summary manner at once, should direct an issue or some other proceeding.

In the instant case, no dispute of title was raised by either Lie Mo Meng or Lie Mo Kwang. Fictitious issues were unnecessarily raised by the defendant company. In my view there was clearly no merit in the second point of the defendant company.

Accordingly, I granted the orders prayed for by the plaintiffs, with the modification that the new share certificates be delivered within 14 days thereof. I awarded costs to the plaintiffs.

Application allowed.

Solicitors: *Shook Lin & Bok; Jing Quee Chin Joo & Teck Hui.*

Reported by *Ng Sheau Jiuan*

Public Prosecutor v Kadir bin Awang

HIGH COURT (SINGAPORE) – CRIMINAL CASE NO 2 OF 1988
SINNATHURAY J AND GRIMBERG JC
3 FEBRUARY 1989

Criminal Law – Dangerous drugs – Importation of – Alibi defence – Objection to admissibility of accused's oral and written statements – Failure of prosecution to call person who recovered package of drugs as witness – Merits of case – Whether elements of offence established – Misuse of Drugs Act (Cap 185, 1985 Ed), s 7

Criminal Procedure – Voire dire – Failure of prosecution to call witnesses in voire dire to rebut accused's allegations – Whether fatal to admission of statement

The accused was charged with having imported 33 packets containing not less than 50.61 gm of diamorphine into Singapore without authorization, an offence under s 7 of the Misuse of Drugs Act (Cap 185, 1985 Ed). It was the prosecution's case that the accused had gone to Malaysia with J, that the drugs had been purchased by the accused in Penang, that the accused and J had returned to Singapore by train from Johore Bahru, that as the train reached a stretch of the railway line at Lower Delta Road in Singapore, the accused had thrown a package containing the drugs out of the train window. The package was retrieved by Y who then took the package to a flat where he was joined later by the accused and J. Narcotics officers subsequently raided the flat and found the 33 packets of diamorphine in a cupboard. J was produced in court but the charge against her was withdrawn and she was discharged, her discharge amounting to an acquittal. At the trial of the accused, she gave evidence on behalf of the prosecution. The case for the defence was that he had not gone to Penang with J and that he had been working as a stevedore on board a Japanese vessel during the period in question. The defence also objected to the admissibility of an oral statement made to the narcotics officer and a written statement made pursuant to s 122(6) of the Criminal Procedure Code (Cap 68, 1985 Ed) contending, inter alia, that they were not made voluntarily and that the written statement was not recorded in compliance with s 122(6). Counsel for the defence also contended that failure of the prosecution to call Y as a witness left a serious gap in the prosecution's case and that an adverse inference should be drawn from this.

Held, convicting the accused:

(1) The failure to call the narcotics officers as witnesses in the voire dire to rebut the accused's allegations was an impru-